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H. L. Sawyer,

Menominee, Mich.

IN THE SUPREME COURT OF THE UNITED STATES

ORIGINAL NO. 25

OCTOBER TERM, 1923

STATE OF MICHIGAN,

Plaintiff,

v.

STATE OF WISCONSIN,

Defendant.

Answer to Plaintiff's Bill of Complaint

HERMAN L. EKERN,

Attorney General,

ROBERT M. RIESER,

Deputy Attorney General,

Attorneys for the State of Wisconsin.

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Comes now the above named defendant, State of Wisconsin, by Herman L. Ekern, Attorney General, and Robert M. Rieser, Deputy Attorney General, its attorneys, and for answer herein respectfully admits, denies, qualifies and explains as follows :

(This answer is made to conform to the general plan of plaintiff's complaint, and for that reason the paragraphs

of plaintiff's complaint have been adopted in the answer so far as it affects the specific paragraphs of said complaint. Preceding each paragraph of this answer will appear in bold face type the particular paragraph of the complaint to which the particular paragraph of the answer refers.)

As to paragraph 1 of the complaint

1. Admits that the state of Michigan was admitted into the Union as a state pursuant to an act of Congress approved January 26, 1837 (5 U. S. Stats. at L., p. 144) with boundaries as described in the Enabling Act of said state approved June 15, 1836 (5 U. S. Stats. at L. 49).

As to paragraph numbered 2 of the complaint

2. Admits the allegation of the paragraph numbered 2 of the complaint, except the last clause thereof, as follows: "and so running as to include within the proposed boundary much more territory than the true course of the said rivers does include therein," which said allegation is hereby specifically denied.

Further answering said paragraph of said complaint, the defendant alleges that the boundary so agreed upon and the boundary as claimed by the state of Wisconsin are identical, and that no basis for dispute as to such boundary has ever existed or was ever understood to exist by the state of Michigan, the United States of America and the state of Wisconsin at any time.

As to paragraph numbered 3 of the complaint

3. Denies all matters set forth in paragraph numbered 3 of the complaint, except so much thereof as alleges that Michigan's admission into the Union of states was conditional upon her acceptance of the conditions contained in her Enabling Act.

Further answering said complaint, defendant alleges that the state of Michigan did not actually accept the conditions of her Enabling Act until the adoption of the Constitution of the state of Michigan in 1850.

As to paragraph numbered 4 of the complaint

4. Admits the allegations of paragraph numbered 4 of the complaint.

As to paragraph numbered 5 of the complaint

5. Denies all of the allegations of paragraph numbered 5 of said complaint, except that the country from the mouth of the Menominee River to the mouth of the Montreal River was wild and uninhabited, which allegation is admitted.

As to paragraph numbered 6 of the complaint

6. Admits the allegations of paragraph numbered 6 of said complaint, except the allegations of the second paragraph beginning on page 10 of said complaint, which said allegations are specifically denied.

As to paragraph numbered 7 of the complaint

7. Denies all matters set forth in paragraph numbered 7 of said complaint.

As to paragraph numbered 8 of the complaint

8. Admits that Captain Cram's report contained certain findings as to the channels of the Menominee River and Green Bay as quoted in paragraph 8, but specifically denies that such reports were in any way erroneous or inaccurate, or in any way disregarded any right of sovereignty of said state of Michigan, and further denies all conclusions and allegations made with reference to said report, as contained in said paragraph numbered 8.

Further answering the allegations of said paragraph 8 of said complaint, defendant alleges that the statements contained in the extracts from the reports of said Captain Cram therein quoted were in all respects true and correct.

Further answering the allegations of said paragraph 8 of said complaint referring to the resolutions of the Michigan legislature (complaint, pages 15 and 16), admits that said state passed the resolutions therein quoted as set forth in said complaint, but alleges the fact to be that said resolutions were passed as the result of information furnished to the legislature of said state by Dr. Douglas Houghton, then state geologist of said state and special commissioner of said state for the purpose of advising the state of Michigan as to the exact boundary line to be run from the mouth of the Montreal River to the mouth of the Menominee River, and appointed as such commissioner pursuant to a joint resolution of the legislature of said

state, passed February 2, 1841, and further alleges that the information so furnished was gathered and obtained by said Douglas Houghton while acting in his official capacity as such commissioner of the plaintiff state, and that such information was true and correct, as was likewise the resolution resulting from the report of the said commissioner.

As to paragraph numbered 10 of the complaint

10. Admits all allegations contained in paragraph numbered 10 of said complaint.

As to paragraph numbered 11 of the complaint

11. Admits that Captain Cram made a further report under date of February 10, 1842, as a result of his second expedition to the northern peninsula, and that the quotations contained in said paragraph are parts of the said report.

Further answering said complaint and the said allegations of said paragraph 11, defendant denies all allegations as to the various branches of said Montreal River, the claims and conclusions as to the proper source of the Montreal River, and all allegations contained in and found on pages 19, 20 and 22 of said complaint, except the authenticity of the quotations therein given.

Further answering said complaint and the specific allegations of paragraph 11 thereof beginning on page 17 and ending on page 24 thereof, defendant alleges that there never were two separate and distinct branches of the Montreal River in 1836 nor at any time since; that in truth and in fact the Montreal River as designated upon the maps of Captain Cram and all the early maps relat-

ing to said territory is the same river intended by Congress as the boundary and is the only Montreal River ever known to geographers, geologists, surveyors, historians and the contemporaries of the events fixing the boundary now in dispute; that the East Branch and West Branch of the Montreal River have been coined since the establishment of said boundary and were not in existence at said time, that at all times when the said boundary was under consideration, the tributary described as the West Branch of the Montreal River in the complaint was described and identified by persons familiar with the region referred to, by the Indian name of Gogogashugan River; that all early surveys of said region identify the Montreal River by said name, and while the Gogogashugan River (called West Branch in plaintiff's complaint) appears on some of said maps, it is not considered of sufficient size or importance to warrant naming it, indicating thereby that it was considered a lesser river and a tributary, rather than a branch of the Montreal River; that from the earliest maps, the so-called West Branch of the Montreal River has always been known as the Gogogashugan, and only recently as white settlers have come to the vicinity of said stream and said stream has been commonly referred to by settlers, as distinguished from the Indian inhabitants of said country, has the name West Branch of the Montreal River been given to said stream, and that said name of West Branch is of very recent date and was entirely unknown to the Indians and the early explorers of said region at or about the time of the laying out of the boundary in question.

Further answering said complaint and that paragraph commencing on page 25 thereof numbered 11, defendant admits the allegations thereof.

As to paragraph numbered 12 of the complaint

12. Denies all matters and claims set forth in paragraph numbered 12 of said complaint.

Further answering said complaint and the allegations of said paragraph 12, defendant alleges that the state of Michigan did ratify and affirm said boundary of Wisconsin and the specific provisions thereof by a constitutional convention held in said state, and by the adoption of the Constitution of the state of Michigan of the year 1850, as prepared by said convention, and by various public acts of its legislature, its constitutional conventions and various other public bodies, and that all of said action was taken with full knowledge and understanding of the real facts with reference to said boundary.

As to paragraph numbered 13 of the complaint

13. Admits the allegations of paragraph numbered 13 of said complaint, except the allegation therein contained that there are or ever were two branches of the Montreal River, which said allegation is specifically denied.

Denies that the state of Wisconsin was admitted with any conditions attached as to any of its boundaries.

As to paragraph numbered 14 of the complaint

14. Further answering said complaint, and particularly paragraph 14 thereof, defendant alleges that the territory claimed by Wisconsin, and particularly the islands therein described, were at all times intended by all parties here concerned to be under the sovereignty

of Wisconsin and to be Wisconsin territory, and that the channel of the Menominee River was and now is such that the islands awarded to Wisconsin never belonged to Michigan and that Michigan is without right to any of the islands claimed in and by the allegations of said paragraph.

As to paragraph numbered 15 of the complaint

15. Denies that the report of Captain Cram contained any misrepresentations as alleged in paragraph 15 of said complaint.

Denies that the Constitution of the state of Michigan adopted in 1850 is and constitutes a reaffirmance of any claim whatsoever, except a claim consistent with the boundary line as claimed by Wisconsin, and alleges that in truth and in fact said constitution was and is a solemn ratification and adoption of the boundary line between the states of Wisconsin and Michigan as it had then been laid out, surveyed and established, and that as such the action of the state of Michigan was taken after said state had become fully advised as to the true facts in reference to the true course of said boundary line and the claim of Wisconsin in respect thereto.

Further answering the allegations of said paragraph 15 of said complaint, defendant alleges that the constitutional convention of 1867 of said state of Michigan again reiterated the understanding of the convention of 1850 and the understanding of the voters with respect thereto, and that said constitution was not adopted because of the increase of state expenditures authorized thereby and for other reasons in no way connected with the change of wording in said boundary description.

As to the allegations contained in said paragraph 15 of said complaint, wherein reference is made to certain investigations made by one George H. Cannon, defendant has no knowledge or information sufficient whereon to base a belief, and therefore puts plaintiff to its proof as to such allegations, and further alleges that to the extent that any claim is made as to any difference in the size of various streams or any claim that any other stream than the Montreal River as it has always been known is a proper boundary line, such claim is false and untrue, and any information or claim to that effect, whether based on information or otherwise, is entirely contrary to the facts.

Further answering said complaint and the specific allegations of said paragraph 15 thereof, defendant alleges that ever since 1842, plaintiff state knew the nature and basis of Wisconsin's claim to the territory now in dispute; that said state knew and recognized such claims of the state of Wisconsin, and admitted by various acts that the boundary as now claimed by the state of Wisconsin was the true boundary and that Wisconsin's claim was in accordance with the intent of the state of Michigan, the Congress of the United States and the state of Wisconsin when said boundary line was first provided for.

Defendant further admits that said resolutions were passed by the legislature of the state of Michigan, but alleges the fact to be that no claim to the territory now claimed by this plaintiff was ever made.

As to paragraph numbered 16 of the complaint

16. Defendant admits that the plaintiff adopted a new constitution in 1908, and that said constitution took effect on January 1, 1909, and alleges that said constitution

was adopted without in any way advising the voters of said state or the members of the constitutional convention of the exact nature and effect of the changes then made in the constitution so far as the boundary lines of said state were affected.

Further answering the allegations of said paragraph of said complaint, defendant alleges that said constitution, in so far as said constitution differs as to boundaries claimed by the plaintiff, was adopted, not for the purpose of making claim to additional territory, but for the purpose of forcing a settlement from the state of Wisconsin, as fully appears from the proceedings of the constitutional convention.

Denies each and every other allegation and claim set forth in said paragraph 16 of said complaint.

As to paragraph numbered 17 of the complaint

17. Defendant admits the allegations of paragraph 17 of said complaint.

Further answering said paragraph 17 of said complaint, plaintiff alleges that in addition to such description of the boundary, said defendant, state of Wisconsin, also adopted the following provisions incorporated in the Enabling Act of Congress, to wit:

“And be it further enacted, that to prevent all disputes in reference to the jurisdiction of islands in the said Brule and Menominee Rivers, the line be so run as to include within the jurisdiction of Michigan all the islands in the Brule and Menominee Rivers (to the extent in which said rivers are adopted as a boundary), down to and inclusive of the Quinisec Falls of the Menominee; and from thence the line shall be so as to include within the jurisdiction of Wisconsin all the islands in the Menominee River from the Falls aforesaid down to the junction of said river with Green Bay;”

and that ever since said time of the adoption of the Michigan constitution, said boundary, so far as the Menominee River of Green Bay is concerned, has been and now is as qualified and limited by the provisions of the Wisconsin Enabling Act approved August 6, 1846, and that said proviso has ever since been accepted and considered as part and parcel of the description of said boundary by the parties hereto and by the government of the United States; that said provisions of said boundary were adopted for the purpose of definitely identifying said boundary and principally the channel of the Menominee River, and were accepted as a fair and equitable division of the islands in the channel of the Menominee River by both plaintiff and defendant herein.

As to paragraph numbered 18 of the complaint

18. Defendant admits the allegations of paragraph numbered 18 of said complaint, except that the dispute dates from the original proceedings establishing the boundary as contained in the act of June 15, 1836, which said allegation is specifically denied, and further alleges that any dispute as to said boundary is due to the wrongful, erroneous and unjust claims of the plaintiff herein.

As to paragraph numbered 19 of the complaint

19. As to paragraph numbered 19 of said complaint, defendant admits that the state of Michigan now lays claim to three distinct sections of territory along the said boundary line.

As to paragraphs 19, 20 and 21 of said complaint,

Defendant admits that the claims as made by the respective parties are in substance as set forth in said paragraphs, but denies that in truth and in fact any of the islands claimed or any of the territory claimed by said state of Michigan properly belongs to said state under her boundaries as defined in the Michigan Enabling Act passed June 15, 1836.

As to paragraph numbered 22 of the complaint

22. Defendant alleges that it has no information sufficient whereon to form a belief as to such allegations, and therefore puts plaintiff to its proof as to the same.

As to paragraph numbered 23 of the complaint

23. Defendant denies each and every allegation of said paragraph 23 of said complaint.

As to paragraph numbered 24 of the complaint

24. Defendant admits that the legislature of Michigan has authorized and directed the attorney general of said state to commence this action.

General answer to the allegations of said complaint

Further answering said complaint generally, and by way of further defense thereto, defendant alleges that the boundary line claimed by plaintiff is not the boundary line intended by Congress at the time plaintiff was ad-

mitted into the Union as a state, nor is it the boundary line intended to be accepted by the people of the state of Michigan at any time; that the boundary line claimed by the state of Wisconsin is the true boundary line and always has been such boundary line and the boundary line intended by Congress to mark the limits of sovereignty of the two respective states, and that said boundary line has always been accepted by the parties to this controversy strictly in accordance with the claim of the state of Wisconsin.

Further answering said complaint, defendant alleges that the plaintiff and the government of the United States have, ever since the passage of the Michigan Enabling Act, recognized the boundary as claimed by the state of Wisconsin; that the parties hereto, as well as the government of the United States, have at all times by solemn acts of the various departments of government recognized and acknowledged the boundary line as now and always claimed by the state of Wisconsin; that all of said parties have always acknowledged the right of sovereignty in the state of Wisconsin over the said territory, and that for the entire period since 1836 and now, Wisconsin has openly exercised her right of sovereignty over all territory within the line as claimed by said state of Wisconsin; that as a result of such action by the state of Wisconsin, and as a result of the acts and activity of the plaintiff and the government of the United States, vast and valuable rights have attached and become vested in reliance upon the validity of the claims of the parties hereto and in reliance upon the failure of the state of Michigan to make any other claim, which said rights would be materially disturbed and damaged, and great inconvenience, doubt and misunderstanding would result if any other

boundary line than that always accepted by the parties hereto were to be adopted, with the result that it is inequitable and unjust to grant any relief to the plaintiff at this time; that if the boundary line as accepted by all the parties hereto and by the government of the United States throughout the period from 1836 to the time of the commencement of this action be now disturbed, such action will result in great hardship, inconvenience and injustice to various communities, municipal corporations, private corporations and individuals who have acted in reliance upon said boundary, and will seriously interfere with the rights of said persons, as well as diverse and different other persons and individuals who have acted in reliance upon the boundary line as so defined and accepted throughout the period aforesaid, all with the result that if relief were now to be granted in accordance with the prayer of the plaintiff herein, great hardship and injustice would be done.

That among other parties affected by this claim are settlers, owners of real estate in the territory in dispute, public and municipal corporations, mining and shipping interests, and diverse and different other interests, none of which are now parties and all of which would be and are adversely affected by any judgment at this time fixing the boundary as claimed by the state of Michigan; that such claimed relief is inequitable, and that it would subject all of such interests to new and different government supervision; would seriously affect vast bond issues made by various public and municipal corporations in reliance upon the boundary as hitherto claimed by the state of Wisconsin and recognized by the plaintiff state of Michigan; would cast doubt and reflection upon the security

back of such bonds and public obligations, and especially as to the entire boundary would remove vast and valuable territory which, when removed, would leave an assessed valuation in the remaining territory within the state of Wisconsin inadequate as security for the indebtedness of the various municipal corporations, and such that in many cases large bond issues would fail because in excess of the constitutional limit of indebtedness prescribed by the constitution of the state of Wisconsin for such municipalities.

Further answering said complaint and by way of further defense thereto, the defendant alleges that the Constitution of the state of Wisconsin, article XI, section 3, provides in part:

"* * * No county, city, town, village, school district or other municipal corporation shall be allowed to become indebted in any manner or for any purpose to any amount including existing indebtedness in the aggregate exceeding 5% on the value of the taxable property therein, to be ascertained by the last assessment for state and county taxes previous to the incurring of such indebtedness. * * *"

That a large number of counties, cities, towns, villages and school districts are located within said disputed territory, all of which have become and are now indebted and become obligated to pay large sums of money in reliance upon the boundary line as claimed by the state of Wisconsin and as recognized by the state of Michigan throughout the period hereinabove referred to, and upon the assumption that the territory embraced within the disputed area affected by this suit was properly within the boundary of the respective municipalities and that a large part of the territory claimed by such municipal corporations was not subject to any claim of the state of Michi-

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 Allegation of
 any special instance
 where bond issue
 was in excess of
 limitation on remaining
 & rightful property value
 as such development, act-
 ionment can
 be directed

gan to any of said territory, and that in reliance upon the claim of the state of Wisconsin resognized by the state of Michigan and also in reliance upon the fact that the territory within their respective boundaries was not subject to the claim of any state, such municipalities became indebted in large amounts, which said indebtedness was evidenced and secured by bond issues offered by such municipalities in reliance upon the apparent proper legal boundary of the state of Wisconsin unaffected by any claim of the state of Michigan; that in purchasing such bonds, the present owners thereof relied upon the continued claim of Wisconsin's right to sovereignty over the area now in dispute and the additional security furnished such purchasers by reason of the large value of said property; that if such area is now removed and a large number of municipalities deprived of a large amount of such property, the security of such bondholders will be materially impaired and in many instances said bonds will be of doubtful value, for the reason that the assessed valuation of the remaining property and area within such municipal corporation is not sufficient to justify a legal bond issue in an amount equivalent to that outstanding at the present time, while in truth and in fact at the time of the issuance of such bonds, ample authority and ample security was in existence, and no question of the constitutional debt limit being exceeded was ever suggested; that by reason thereof, said bondholders are material parties to this suit and have acquired vested rights in reliance upon the failure of the state of Michigan to make any claim to the territory now in dispute throughout the period aforesaid, with the result that it is unjust and inequitable at this time to take any action with reference to such boundary which will in any way affect the validity of the

bonds and the indebtedness in question or the security of the bondholders of such municipal corporations.

Further answering said complaint, defendant alleges that Island Lake, referred to by the plaintiff in the complaint as being one of the "Lakes of the Desert" is not one of the Lakes of the Desert and never was considered to be such lake, and is in fact removed from the true Lake of the Desert by a distance of 60 miles or more; that at all of the times when the boundary line in question was under consideration, there was and now is a large, well-known lake, which was known by the name Lac Vieux Desert or Lake of the Desert, which said lake was noted upon all of the maps at the time of the establishment of said boundary and was always accepted as one of the principal landmarks or monuments in the establishment of said boundary, and that said Lake of the Desert is not Island Lake referred to in the complaint, but is an entirely different lake, in no way connected with said Lake of the Desert, and that said Island Lake was never intended to be and never understood by any of the parties to this controversy or by the government of the United States to be a part of the boundary line between the state of Wisconsin and the state of Michigan.

WHEREFORE, defendant prays that plaintiff take nothing by this complaint and that this action be dismissed, and that it be adjudged that the boundary line as claimed by the state of Wisconsin is the true and correct boundary line between the state of Michigan and the state of Wisconsin, and that in so far as there may now be lack of any monuments or any sufficient markers identifying and establishing said boundary, proper marks of identi-

fication be established, to the end that further and future disputes may be avoided.

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